IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 5TH JULY 2007/14TH ASHADHA 1929

CRP.No. 322 of 2004(B)

AGAINST THE ORDER DATED 10/03/2004 IN EP 386/94 IN OS.3/1983 of PRL.M.C., KOLLAM

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REVN. PETITIONER: JUDGMENT DEBTORS 1 AND 2.
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1. O.BHARGAVI, PALLIPPURATHU VEEDU, VADAKKUMBHAGOM WARD, KOLLAM.

2. BABY PRASAD, PALLIPURATHU VEEDU, VADAKKUMBHAGOM WARD, KOLLAM.

ADDL. RESPONDENTS 3 TO 5 IMPLEADED:

3. KUMARI PRASAD, PALLIPPURATHU VEEDU, VADAKKUMBHAGOM WARD, KOLLAM.

4. DR. BINU PRASAD, -DO- -DO-

5. PRASANTH P.K. -DO- -DO-

ADDL. PETITIONERS 3 TO 5 IMPLEADED BEING THE LEGAL REPRESENTATIVES OF DECEASED 2ND PETITIONER AS PER ORDER DATED 13/6/07 IN IA 1090/07.

R1 BY ADV. SRI. B.SURESH KUMAR
SMT.T.V.NEEMA

RESPONDENTS: DECREE HOLDER AND 3RD JUDGMENT DEBTOR.
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1. P.K.GOPINATH, ANANDA BHAVAN, THANKASSERY, PUNNATHALA CHERRY, KOLLAM.

2. BABY PRAKASH, PALLIPPURATHU VEEDU, VADAKKUMBHAGOM WARD, KOLLAM.

R1 BY ADV. SRI.P.B.SURESH KUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 322 OF 2004

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Dated this the 5th day of July, 2007.

O R D E R

This revision petition is preferred against the order of the Court below in E.P.386/94. The plaintiff instituted a suit for recovery of possession on the strength of title. A Commissioner was appointed and he submitted his plan and report which was marked as Ext.C9. While decreeing the suit the Court took special care to append Ext.C9 plan as part of the decree. So the property to be delivered must be in terms of Ext.C9 and nothing else. It is also submitted that in pursuance of the execution petition the Amin entered the property, delivered the property and full satisfaction was recorded. Thereafter, the decree holder has moved an application stating that there is shortage in the extent of property and therefore he approached the Court to appoint a Commissioner to deliver the extent which has not been delivered to him. Unfortunately, the Court appointed another Commissioner and a plan and report is submitted by him and an order was passed in accordance with that.

2. I am afraid that the order made by the Court is not proper for the reason that none of the parties and the Court can interfere with the decree at this stage of execution because Ext.C9 is the final plan approved and sealed by the Court and

appended to the decree while granting the recovery of possession. Therefore, it must be only strictly in consonance with Ext.P9 plan the property has to be delivered to the decree holder. I am informed that the Commissioner who visited the property as per Ext.C9 plan is still practicing. Therefore, in the fitness of things and in order to adjudicate the dispute between the parties the same Commissioner be deputed to visit the property with the assistance of a surveyor, if necessary, with the Amin and then find out whether the property covered by Ext.C9 has been delivered or not. If there is any short delivery or excess delivery, that also may be reported and the Court will pass appropriate order in the light of the same after hearing both sides. It is also made clear that the decree holder has to bear the expenses for the issuance of the Commission with the help of the surveyor, if necessary. The order under challenge is set aside and the parties are directed to appear before the Court below on 4.8.07 and take steps as stated in the above paragraph of this order and let the work be completed within a period of 2 months from the date of appearance of the parties before the executing Court.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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